

Bill no.:	HR 4127
Amendment no.:	1b
Date offered:	H.L.C. 11/3/05
Disposition:	Not Agreed to by 8 years and 15 days

**AMENDMENT TO HR 4127**  
**OFFERED BY MR. MARKEY**

*the amendment offered by  
Mr. Strawn*

**Offshoring of data**

*At the end of the stearns amendment add:*

Page 11, after line 7, insert the following new section (and redesignated succeeding sections accordingly):

**SEC. 4. OFFSHORING OF DATA CONTAINING PERSONAL INFORMATION WITHOUT CONSENT.**

(a) CONSENT REQUIRED FOR COUNTRIES WITHOUT ADEQUATE PRIVACY PROTECTION.—No person engaged in interstate commerce may transmit data in electronic form containing personal information to any foreign affiliate or subcontractor located in a country which is not certified under subsection (b) as providing adequate privacy protection, unless—

(1) such person has provided prior notice to the individual to whom the personal information relates that the country to which the information will be transmitted does not have adequate privacy protection;

(2) such person obtains consent from such individual to transmit such information to such foreign affiliate or subcontractor within 1 year before such information is transmitted.





1 (b) CERTIFICATION OF COUNTRIES WITH ADEQUATE  
2 PRIVACY PROTECTIONS.—

3 (1) IN GENERAL.—Not later than 6 months  
4 after the date of enactment of this Act , the Federal  
5 Trade Commission, after providing notice and oppor-  
6 tunity for public comment, shall—

7 (A) certify those countries that have legal  
8 systems that provide adequate privacy protec-  
9 tion for personal information; and

10 (B) make the list of countries certified  
11 under paragraph (1) available to the general  
12 public.

13 (2) CERTIFICATION CRITERIA.—

14 (A) IN GENERAL.—In determining whether  
15 a country should be certified under this sub-  
16 section, the Federal Trade Commission shall  
17 consider the adequacy of the country's infra-  
18 structure for detecting, evaluating, and re-  
19 sponding to privacy violations.

20 (B) PRESUMPTION.—The Commission  
21 shall presume that a country's privacy protec-  
22 tions are inadequate if they are any less protec-  
23 tive of personally identifiable information than  
24 those afforded under Federal law or under the  
25 laws of any State, or if the Commission deter-





1 mines that such country's laws are not ade-  
2 quately enforced.

3 (3) EUROPEAN UNION DATA PROTECTION DI-  
4 RECTIVE.—A country that has comprehensive pri-  
5 vacy laws that meet the requirements of the Euro-  
6 pean Union Data Protection Directive shall be cer-  
7 tified under this section unless the Federal Trade  
8 Commission determines that such laws are not com-  
9 monly enforced within such country.

10 (c) PROHIBITION ON REFUSAL TO PROVIDE SERV-  
11 ICES.—No person shall deny the provision of any good or  
12 service to, nor change the terms of or refuse to enter into  
13 a business relationship with any individual based upon  
14 that individual's exercise of the consent rights provided  
15 for in subsection (a) or in any other applicable law.

Page 11, line 11, strike "section 2 or 3" and insert  
"sections 2, 3, or 4".



